



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150-2358*

**Jean M. Lorizio, Esq.**  
*Chairman*

**NOTICE OF INDEFINITE SUSPENSION**

May 7, 2021

**BDGA LLC D/B/A BODEGA CANAL  
69 CANAL STREET  
BOSTON, MA 02114  
LICENSE#: 03343-RS-0116  
VIOLATION DATE: 1/16/2021  
HEARD: 2/23/2021**

After a hearing on February 23, 2021, the Commission finds BDGA LLC d/b/a Bodega Canal violated:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 57 (Dec. 8, 2020);
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 58 (Dec. 8, 2020) – Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

Therefore, the Commission **INDEFINITELY SUSPENDS** the license of BDGA LLC d/b/a Bodega Canal **effective forthwith** until further written order of the Commission.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION



Jean M. Lorizio  
Chairman

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这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Kyle E. Gill, Esq., Associate General Counsel  
David Bolcome, Investigator  
Joseph Di Cicco, Investigator  
Michael Flanagan, Dept. of Labor Standards  
William Ferullo, Esq.  
Administration, File



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**DECISION**

**BDGA LLC D/B/A BODEGA CANAL**  
**69 CANAL STREET**  
**BOSTON, MA 02114**  
**LICENSE#: 03343-RS-0116**  
**VIOLATION DATE: 1/16/2021**  
**HEARD: 2/23/2021**

BDGA LLC d/b/a Bodega Canal (the "Licensee") holds an alcoholic beverages license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, February 23, 2021, regarding alleged violations of:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19;
- 2) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19;
- 3) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 57 (Dec. 8, 2020);
- 4) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Mass. Exec. COVID-19 Order No. 58 (Dec. 8, 2020) – Failure to comply with rules applicable to Step 1 of Phase III of the Re-Opening Plan.

Prior to the commencement of the hearing, the Licensee stipulated to the facts in Investigator Bolcome's report with two modifications.

The above-captioned occurred January 16, 2021 according to Investigator Bolcome's Report.

The following documents are in evidence:

1. Investigator Bolcome's Report;
2. ABCC Form 43 License Approval, 5/17/2017;
3. Massachusetts Executive COVID-19 Order No. 37, 6/6/2020;
4. Massachusetts Executive COVID-19 Order No. 40, 6/19/2020;
5. Massachusetts Executive COVID-19 Order No. 57, 12/8/2020;

6. Massachusetts Executive COVID-19 Order No. 58 12/8/2020;
  7. Massachusetts Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19, 12/11/2020;
  8. ABCC Enforcement Memorandum, 2/18/2021;
  9. Mass.gov website printout of Safety Standards and Checklist: Restaurants; and
  10. Licensee's modified Stipulation of Facts.
- A. Licensee's Six (6) Photos of Exterior Windows;
  - B. Licensee's Safety Protocol Memo; and
  - C. POS Receipt for Table.

In addition, the Licensee submitted a Memorandum in Support of Licensee's Position.

There is one (1) audio recording of this hearing.

#### FINDINGS OF FACT

1. On Saturday, January 16, 2021, at approximately 8:30 p.m., Investigators Di Cicco and Bolcome ("Investigators") conducted an investigation of BDGA LLC d/b/a Bodega Canal to determine the manner in which its business was being conducted, and to ensure compliance with Massachusetts Governor Charles Baker's Executive COVID-19 Orders. (Exhibit 1, Testimony)
2. While outside of the licensed premises, Investigators heard loud music coming from the establishment. Id.
3. Once Investigators were within arm's reach of the window, they were able to observe two (2) young women inside dancing. Id.
4. Investigators entered the licensed premises and observed a large open room with customers eating and drinking while seated at tables. Id.
5. Investigators walked left through a hallway which opened-up to another room. Investigators observed the two (2) young women standing between the couch area and bar area. Investigators observed a bartender making drinks in clear view of the two (2) young women. Id.
6. The Investigators observed the bar area which has a two-sided couch, with tables placed in front of each of the couch's seating surfaces along with a third couch on the other side of one of the tables, facing inward. Investigators observed the individuals on the two-sided couch interacting with one another, to the point where Investigators believed they were one party. Id.
7. Investigators approached the bartender on duty and requested to speak with the manager. Id.
8. Investigators informed Mr. DiBenedetto of the violations and that a report would be filed with the Chief Investigator for review. Investigators reviewed the COVID guidelines and Sector Specific Safety Standards with Mr. DiBenedetto. Id.

9. Nicholas Frattaroli, the Licensee, and Jason DiBenedetto, the manager on duty, appeared and testified before the Commission. Mr. DiBenedetto stated the tables were six (6) feet apart in the couch area. The couches were two separate parties, a table of six and table of four, but they were seated back-to-back interacting. Prior to the Investigators entering the premises, Mr. DiBenedetto and the bartender had spoken to the two (2) young women who were dancing and told them to sit down. (Exhibit A, Exhibit C, Testimony)
10. The Licensee has held a license under M.G.L. c. 138, § 12 since 2017, with no prior violations. (Exhibit 2, Commission Records)

### DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in Massachusetts General Laws, Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was “enacted ... to serve the public need and ... to protect the common good.” M.G.L. c. 138, § 23. “[T]he purpose of discipline is not retribution, but the protection of the public.” Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given “comprehensive powers of supervision over licensees.” Connolly, 334 Mass. at 617.

The Licensee is charged with a violation of 204 CMR 2.05 (2). “No licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises.” 204 CMR 2.05 (2). More specifically the Licensee is charged with permitting an illegality on the licensed premises, to wit:

Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;

Massachusetts Executive COVID-19 Order No. 40 (June 19, 2020) - Violation of sector specific workplace safety standards for restaurants to address COVID-19;

The Executive COVID-19 Orders require adherence to all Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (December 11, 2020) including:

All customers must be seated; and

Ensure separation of 6 feet or more between all individuals (workers, vendors, and customers)...

Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19 (December 11, 2020)

Direct evidence was presented through the testimony of Investigator Bolcome as to patrons standing and parties seated less than 6 feet apart.

The Licensee argued the Governor's COVID-19 Orders require a distance of six (6) feet between tables, as opposed to seats. The Commission is not persuaded by this argument as the Orders require not only six (6) feet between tables, but also a separation of six (6) feet or more between all individuals. As such, parties may not be seated less than six (6) feet from one another. Here, it was undisputed that the parties seated on either side of the two-sided couch were less than six (6) feet apart.

The Commission is persuaded by the evidence that a violation of 204 CMR 2.05(2), to wit: Massachusetts Executive Orders 37, 40, 57, and 58 did occur.

### CONCLUSION

Based on the evidence, the Commission finds the Licensee violated:

- 1) 204 CMR 2.05 (2) Permitting an Illegality on the Licensed Premises, to wit: Massachusetts Executive COVID-19 Order No. 37 (June 6, 2020) - Violation of Sector Specific Workplace Safety Standards for Restaurants to Address COVID-19;
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The Commission hereby **INDEFINITELY SUSPENDS** the license of BDGA LLC d/b/a Bodega Canal **effective forthwith** until further written order of the Commission.

The Commission will not issue any further order without a written request from the licensee showing good cause to reconsider this indefinite suspension. Good cause for the Commission to consider issuing a further written order revising the order of indefinite suspension will include, but not be limited to the Licensee receives approval from the Massachusetts Department of Labor Standards ("DLS") as to a reopening plan. The Licensee must submit to the DLS a COVID Control Plan to reopen (see link here: <https://www.mass.gov/doc/sector-specific-workplace-safety-standards-for-restaurants-to-address-covid-19-030121/download>) and operate in compliance with COVID 19 Orders Nos. 33, 37, 40 and 43, and the Restaurant Sector Specific Standards. Said plan must be submitted to both Michael Flanagan ([michael.flanagan@mass.gov](mailto:michael.flanagan@mass.gov)) and Mary Dozois ([mary.dozois@mass.gov](mailto:mary.dozois@mass.gov)) requesting review and approval.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman

*Jean M. Lorizio*

Crystal Matthews, Commissioner

*Crystal Matthews*

Deborah A. Baglio, Commissioner

*Deborah A. Baglio*

Dated: May 7, 2021

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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